

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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100 Maryland Avenue  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

**Case No. A-6540**

**PETITION OF JANICE KRETZ**

OPINION OF THE BOARD

(Hearing Held: December 6, 2017)

(Effective Date of Opinion: December 13, 2017)

Case No. A-6540 is an application by Janice Kretz (the "Petitioner") for a variance of 1.50 feet from the side lot line setback. The Petitioner is seeking to construct a second floor addition on top of an existing structure which is within 5.5 feet of the side lot line. The required setback is seven (7) feet, in accordance with Section 59-4.4.9.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, December 6, 2017. Petitioner Janice Kretz appeared pro se at the hearing with Lisa Kretz, and with her architect, Eric Saul.

Decision of the Board:                      Variance **GRANTED.**

**EVIDENCE PRESENTED**

1. The subject property is Lot 5, Block Q, 0022 Subdivision located at 741 Thayer Avenue, Silver Spring, MD, 20910, in the R-60 Zone. It is a rectangular lot, with north (rear) and south (front) sides measuring 50 feet each, and with east and west sides measuring 150 feet each, for a total area of 7,500 square feet. See Exhibit 4.<sup>1</sup> The minimum allowable width at the front building line for a lot in the R-60 Zone is 60 feet; this lot is 50 feet wide. See Exhibits 3 and 4.

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<sup>1</sup> Note that the property lines on Exhibit 4 are incorrectly labeled as to their ordinal directions, but that the North arrow on that Exhibit comports with the Zoning Vicinity Map at Exhibit 7, and with the property as described in Exhibit 3, and is thus presumed to be correct.

2. Per the Justification Statement, the subject property contains an existing house, built in 1918, which extends approximately 1.5 feet into the side lot line setback on the eastern side of the property. See Exhibits 3 and 4.

3. The Petitioner is seeking to construct a second story addition on the east side of the existing structure. Per the Justification Statement,

The addition is proposed to be built over the existing footprint of the existing first floor, which is 1.5 feet into the side yard setback. ... Petitioner proposes to construct the addition 5.5 feet from the side lot line, and no closer to the property line than the existing structure below. The addition has the appearance of a dormer to reduce the effect of encroachment on the neighboring property. The height of the addition will not exceed the height of the existing structure of 24' above grade."

See Exhibits 3, 4, and 5(a)-(c).

4. The Justification Statement notes that the existing structure is legal and nonconforming because the existing house was approximately 5.5' from the east side lot line when it was constructed in 1918. The Justification Statement notes that there was no side setback at that time.<sup>2</sup> The Petitioner purchased the subject property in 2000, and is not responsible for the placement of the existing house within the side setback. See Exhibit 3.

5. Without the grant of this variance, the Justification Statement indicates that the Petitioner will be unable to construct a full length second floor addition on her Craftsmen-style bungalow house, as many of her neighbors have been able to do. It further indicates that without the grant of the requested variance, the Petitioner will be unable to locate a second floor addition over the existing first floor bearing wall, which would be impractical, and that because of this, "[a]dditional beams, columns, and posts would be required down through the existing home all the way through the basement to bear the weight of the addition." See Exhibit 3.

6. The Justification Statement notes the following with respect to master plan compliance and the effect of the proposed construction on neighboring properties:

By keeping within the existing footprint of 5.5 feet from the side lot line and not increasing the overall building height of 24', the proposed addition preserves the residential character of the neighborhood while the enlarged dormer allows the Petitioner to reinvest in their home and enhance their quality of life. It is our strong belief that the variance can be granted without impairment to the intent and integrity of the general plan and any applicable master plan in this area.

\* \* \*

The proposed addition to the existing structure will not extend beyond the existing footprint below, thus it will not negatively impact the adjoining side yard. The

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<sup>2</sup> The Board notes that the first Zoning Ordinance in Montgomery County was not adopted until 1928.

addition is merely a lengthening of the existing rear dormer to increase the second floor footprint. The addition will not negatively impact the character, health, safety, welfare, or security of the neighboring residents. Many of the neighboring houses have much larger additions than the Petitioner is proposing.

See Exhibit 3.

7. At the hearing, the Petitioner and Ms. Lisa Kretz testified that the proposed addition would extend over the existing house so that the second floor walls would be on top of the first floor walls.

### FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and that of their witness, and based on the evidence of record, the Board finds that the requested variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.ii. - the proposed development uses an existing legal nonconforming property or structure;*

The Board finds that the proposed development uses an existing structure which extends approximately 1.5 feet into the side setback on the east side of the property, and which was built in 1918, before the enactment of Montgomery County's first Zoning Ordinance. Thus the Board finds that the Petitioner's existing home does not comply with the side lot line setback required by the Montgomery County Zoning Ordinance, and is nonconforming. Accordingly, the Board finds that the application satisfies Section 59-7.3.2.E.2.a.ii of the Zoning Ordinance.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the house on the subject property was built in its current location in 1918, and that the Petitioner did not purchase this property until 2000. Thus the Board finds that the Petitioner took no actions to create the special circumstances or conditions peculiar to this property.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the testimony of the Petitioner and Ms. Lisa Kretz, and on the Statement in the record at Exhibit 3, that the requested variance is the minimum necessary to allow the proposed construction to proceed. The Board finds that the requested variance is minimal in that it allows the construction of a second-story addition directly over an existing home, and would not increase the footprint of the existing house or extend any further into the setbacks than the existing house, which has been in place since 1918. The Board further finds that without the grant of this variance, the Petitioner could not use the existing bearing wall as support for the proposed addition, which in turn would necessitate the installation of additional beams, columns, and posts through the existing home and down through the basement in order to withstand the weight of the addition. Thus the Board concludes that compliance with the required side lot line setback, which is violated by an existing house, would pose a practical difficulty for the Petitioners, and that the grant of the requested 1.5 foot variance is the minimum necessary to allow construction over the existing structure and therefore to overcome the difficulties that full compliance with the Zoning Ordinance would impose.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the proposed construction will continue the residential use of this property, consistent with the recommendations of the East Silver Spring Master Plan, which seeks to "[s]ustain and enhance residential neighborhoods."

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

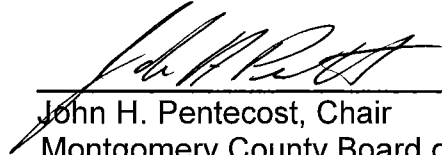
The Board finds that the record contains no opposition to the proposed construction, which again would continue the residential use of this home. In addition, the Board finds, per the Justification Statement, that "[t]he addition has the appearance of a dormer to reduce the effect of encroachment on the neighboring property. The height of the addition will not exceed the height of the existing structure of 24' above grade." Finally, the Board concludes that the proposed addition would not be out of place in the neighborhood, since the Justification Statement indicates that many of the Petitioner's neighbors have full length second floor additions on their bungalow-style houses. On the basis of the foregoing, the Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance to allow the proposed construction of a second floor addition is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by Edwin S. Rosado, Vice Chair, seconded by Stanley B. Boyd, with John H. Pentecost, Chair, Bruce Goldensohn, and Katherine Freeman in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
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John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 13th day of December, 2017.

  
\_\_\_\_\_  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.